

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
WESTERN DIVISION**

WILLIAM COUSER and SUMMIT
CARBON SOLUTIONS, LLC,

Plaintiffs,

v.

SHELBY COUNTY, IOWA; SHELBY
COUNTY BOARD OF SUPERVISORS;
STEVE KENKEL, in his official capacity as a
Shelby County Supervisor; CHARLES
PARKHURST, in his official capacity as
Shelby County Supervisor; DARIN HAAKE,
in his official capacity as Shelby County
Supervisor,

Defendants.

Related case: 4:22-cv-383

CASE NO. 1:22-cv-20

**DEFENDANTS' MOTION TO
CERTIFY QUESTIONS TO THE
IOWA SUPREME COURT AND TO
STAY PROCEEDINGS PENDING
SAME**

EXPEDITED RELIEF REQUESTED

Defendants Shelby County, Iowa, Shelby County Board of Supervisors, Steve Kenkel, Charles Parkhurst, and Darin Haake (collectively “the County”), pursuant to Iowa Code section 684A.1, hereby move the Court to certify questions to the Iowa Supreme Court and to stay proceeding pending the same, and in support, state as follows:

1. On November 15, 2022, Plaintiffs filed this lawsuit against the County and its Board of Supervisors in their official capacities. ECF No. 1. The Complaint seeks declaratory relief that the County’s hazardous liquid pipeline ordinance is preempted by Iowa Code chapter 479B and the federal Pipeline Safety Act, 49 U.S.C. § 60101 *et seq.*, and seeks injunctive relief prohibiting the County from enforcing the ordinance. *Id.*

2. On February 6, 2023, Plaintiffs filed a motion for preliminary injunction seeking to enjoin the County from enforcing the ordinance. ECF No. 23. The County resisted the motion. ECF No. 30, 33. A hearing was held on March 31, 2023. ECF No. 46.

3. On July 10, 2023, the Court entered its Order on Motion for Preliminary Injunction. ECF No. 51. The Court found that the setback and permitting requirements of the ordinance were likely to be impliedly preempted by Iowa Code chapter 479B. ECF No. 51 at 21-27. The Court found that the emergency response, hazard mitigation, and abandonment provisions of the ordinance were likely to be expressly preempted by the Pipeline Safety Act. ECF No. 51 at 28-30. Accordingly, the Court enjoined the County from enforcing the ordinance.

4. Because the most critical provisions of the ordinance were found to be likely preempted by state law rather than federal law, and because the state preemption issue is a novel and unsettled question of state law, is of high public importance, and is the subject of six pending lawsuits in the United States District Courts for the Southern and Northern Districts of Iowa, the County moves the Court to certify the state preemption questions to the Iowa Supreme Court for a definitive ruling on this important issue of state law.

5. The County requests that the Court certify the following questions to the Iowa Supreme Court:

- a. Does Iowa Code chapter 479B preempt county zoning ordinances that impose setback requirements on hazardous liquid pipelines in the county?
- b. Does Iowa Code chapter 479B preempt county zoning ordinances that require a pipeline company to obtain a zoning permit prior to constructing a hazardous liquid pipeline in the county?
- c. Does Iowa Code chapter 479B preempt county zoning ordinances that require landowners to obtain a zoning permit prior to granting an easement to a pipeline company intending to construct a hazardous liquid pipeline in the county?

6. The County also requests that the Court grant a temporary stay of current deadlines pending resolution of the County's certification motion. The current dispositive motion deadline is August 4, 2023. ECF No. 54. It is unlikely the Court will be able to rule on the certification

motion before that deadline. Accordingly, granting a temporary stay will prevent the parties from having to incur the time and expense of preparing summary judgment motions which may ultimately be unnecessary if the Court certifies questions to the Iowa Supreme Court.

7. In the event the Court grants certification, a stay pending the Iowa Supreme Court's resolution of the certified questions should also be granted. The Iowa Supreme Court's resolution of the certified questions will narrow the issues for decision, and thus a stay will prevent unnecessary expenditures of time, attorney's fees, and resources that would be better spent after the Iowa Supreme Court weighs in.

8. Given the rapidly approaching dispositive motion deadline, the County requests that the Court consider this motion, or at least the request for a temporary stay, on an expedited basis.

9. The County has filed, and incorporates herein by reference, a brief in support of this motion.

10. Pursuant to Local Rule 7(k), the County has conferred with counsel for Summit, and Summit does not consent to the relief requested herein.

WHEREFORE, the County requests that the Court:

- A. Temporarily stay deadlines pending resolution of the County's Motion to Certify;
- B. Certify the following questions to the Iowa Supreme Court:
 - 1. Does Iowa Code chapter 479B preempt county zoning ordinances that impose setback requirements on hazardous liquid pipelines in the county?
 - 2. Does Iowa Code chapter 479B preempt county zoning ordinances that require a pipeline company to obtain a zoning permit prior to constructing a hazardous liquid pipeline in the county?
 - 3. Does Iowa Code chapter 479B preempt county zoning ordinances that require landowners to obtain a zoning permit prior to granting an easement

to a pipeline company intending to construct a hazardous liquid pipeline in the county?

- C. Upon certification, extend the stay until such time as the Iowa Supreme Court resolves the certified questions; and
- D. Grant such other and further relief as the Court deems just and proper.

/s/ Jason M. Craig
 Jason M. Craig (AT0001707)
 AHLERS & COONEY, P.C.
 100 Court Avenue, Suite 600
 Des Moines, Iowa 50309-2231
 Telephone: (515) 243-7611
 Facsimile: (515) 243-2149
 Email: jcraig@ahlerslaw.com
 ATTORNEYS FOR DEFENDANTS

Electronically filed.

Copy to:

Bret A. Dublinske
 Brant M. Leonard
 Kristy Dahl Rogers
 FREDRIKSON & BYRON, P.A.
 111 East Grand Ave., Suite 301
 Des Moines, IA 50309
bdublinske@fredlaw.com
bleonard@fredlaw.com
krogers@fredlaw.com

Brian D. Boone
 Michael R. Hoernlein
 ALSTON & BIRD LLP
 101 S. Tyron St., Ste. 4000
 Charlotte, NC 28280
brian.boone@alston.com
michael.hoernlein@alston.com

Karla M. Doe
 ALSTON & BIRD LLP
 1201 West Peachtree Street
 Atlanta, GA 30309

CERTIFICATE OF SERVICE			
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on: <u>7/21/23</u>			
By:	<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Fax	
	<input type="checkbox"/> Hand delivery	<input type="checkbox"/> Private Carrier	
	<input checked="" type="checkbox"/> Electronically (via CM-ECF)	<input type="checkbox"/> E-mail	
Signature:	<u>/s/ Jason M. Craig</u>		

karla.doe@alston.com

ATTORNEYS FOR PLAINTIFFS